

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Atwood Cleaners, LLC

FILE NO.: OCI-HW-16-50

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 807 Atwood Avenue in the city of Cranston (the “Property”). The Property includes a facility used for the operation of a dry cleaning business (the “Facility”).
- (2) Respondent operates the Facility.
- (3) Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “Atwood Cleaners” with the U.S. Environmental Protection Agency identification number (“EPA ID”) RID018526913.
- (4) On 2 June 2016 and 6 June 2016, the DEM inspected the Facility. The inspection revealed the following:
 - (a) One 30-gallon satellite container and two 5-gallon satellite containers were not labeled. The 30-gallon container and one of the 5-gallon containers were open;
 - (b) Three 30-gallon containers, four 20-gallon containers and one 15-gallon container holding hazardous waste (the “Containers”) were not labeled, not marked with accumulation start dates and not stored with a minimum of 3 feet of aisle space between the rows of containers. The 15-gallon container was open;
 - (c) No weekly inspections of the Containers was conducted;

- (d) A 1-gallon container located in the basement holding used oil was not labeled and was open;
 - (e) No written contingency plan (or other documents that comply with the DEM's Hazardous Waste Regulations 5.15H.1) were prepared;
 - (f) An evaporator was in operation at the Facility to treat hazardous waste (the "Evaporator"), but no written plan was prepared for the operation of the Evaporator; and
 - (g) Universal hazardous waste is generated at the Facility, but the employees were not informed about the proper management and handling of universal waste.
- (5) Review of records maintained by the DEM revealed that Respondent failed to submit to the DEM a form for the Evaporator.
 - (6) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to demonstrate full compliance with the findings described in Sections C(4) and C(5) above.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's Hazardous Waste Regulations 5.9A** – requiring that a hazardous waste generator label all satellite containers holding hazardous waste with the words "Hazardous Waste" and the chemical or common name of the waste.
- (2) **DEM' Hazardous Waste Regulations 5.15D.1** – requiring that a hazardous waste generator label each container, excluding satellite containers, holding hazardous waste with the words "Hazardous Waste", the chemical or common name of the waste and the name, address and EPA ID of the generating facility.
- (3) **DEM's Hazardous Waste Regulations 5.15B.1** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (4) **DEM's Hazardous Waste Regulations 5.9D and 5.15B.2** – requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (5) **DEM's Hazardous Waste Regulations 5.10** – requiring that a hazardous waste generator maintain a minimum of 3 feet of aisle space between rows of containers to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.

- (6) **DEM's Hazardous Waste Regulations 5.15B.7** – requiring that a hazardous waste generator conduct weekly inspections of container storage areas looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation of the inspection of each hazardous waste storage area.
- (7) **DEM's Hazardous Waste Regulations 15.4A3** – requiring that a used oil generator label all containers holding used oil with the words “used oil”.
- (8) **DEM's Hazardous Waste Regulations 15.4A5** – requiring that a used oil generator keep all containers holding used oil closed except when adding or removing used oil.
- (9) **DEM's Hazardous Waste Regulations 5.15.H.1** – requiring that a hazardous waste generator prepare and maintain a written contingency plan or otherwise comply with the requirements of this rule.
- (10) **DEM's Hazardous Waste Regulations 13.5 and 40 CFR 273.16** – requiring that a hazardous waste generator inform company employees of the proper management and handling of universal waste.
- (11) **DEM's Hazardous Waste Regulations 5.2D5(g)** – requiring that a hazardous waste generator prepare a written plan for the operation of an evaporator and submit a form to the DEM prior to using an evaporator to treat waste.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to **within 30 days of receipt of the NOV:**

- (1) Label all satellite containers holding hazardous waste with the words “Hazardous Waste” and the chemical or common name of the waste;
- (2) Label all containers holding hazardous waste, excluding satellite containers, with the words “Hazardous Waste”, the chemical or common name of the waste and the Generator’s name, address and EPA ID;
- (3) Mark all containers holding hazardous waste, excluding satellite containers, with the date upon which the hazardous waste first began to accumulate;
- (4) Close and keep closed all containers holding hazardous waste except when adding or removing waste;
- (5) Provide a minimum of 3 feet of aisle space in the hazardous waste storage areas to allow for the unobstructed movement of personnel and emergency equipment;
- (6) Begin conducting weekly inspections of the hazardous waste container storage areas looking for leaking containers and signs of deterioration caused by

corrosion or other factors and maintain documentation onsite of the inspection of each hazardous waste storage area for a period of at least 3 years;

- (7) Label all containers holding used oil with the words “used oil” and keep the containers closed except when adding or removing waste;
- (8) Develop and maintain a hazardous waste contingency plan for the Facility or comply with the requirements of the DEM’s Hazardous Waste Regulation 5.15H.1;
- (9) Provide training to Facility personnel that manage/handle universal waste which is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the DEM's Office of Compliance & Inspection (“OC&I”); and
- (10) Prepare a written plan for the operation of the Evaporator and submit a copy of the plan and an Evaporator Information Form to the DEM.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$16,750

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Environmental Response Fund,” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

F. Right to Administrative Hearing

(1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 4TH Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

(3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

(4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina A. Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Atwood Cleaners, LLC
c/o Brij Chaudhary, Registered Agent
43 Briggs Street
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-16-50

Respondent: Atwood Cleaners, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1), (2) & (3) - Container Labeling & Accumulation Date	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (4) – Open Containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (5) – Aisle Space	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
C (6) – Weekly Inspections	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (7) & (8) – Used Oil Container Labeling & Open Container	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (9) & (10) – Contingency Plan & UW Training	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (11) – Evaporator Plan & Information Form	Type III (\$ <u>6,250</u> Max. Penalty)*	Minor	\$250	2 violations	\$500
SUB-TOTAL					\$16,750

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$16,750

PENALTY MATRIX WORKSHEET

CITATION: Container Labeling & Accumulation Date
 VIOLATION NO.: C (1), (2), (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to label satellite containers and completely label 365 day containers holding hazardous waste. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of hazardous waste. Proper labeling of hazardous waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. Respondent also failed to mark the 365 day containers with the date upon which the waste first began to accumulate. The accumulation start date enables generators and regulatory authorities to track the amount of time hazardous waste is stored at a facility. This requirement is of significant concern to the regulatory program because it helps ensure that hazardous waste is not stored onsite for extended periods of time. Storage exceeding certain time thresholds require the generator to obtain a hazardous waste storage permit.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** 11 containers holding approximately 225 gallons of hazardous waste that were not labeled and 8 containers holding approximately 185 gallons of hazardous waste that were not marked with an accumulation start date.
- (D) **Toxicity or nature of the pollutant:** Perchloroethylene is likely to be carcinogenic to humans and possess a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by properly labeling and dating the containers. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Open Containers

VIOLATION NO.: C (4)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to keep closed satellite containers and a 365 day container holding hazardous waste. The requirement to keep containers holding hazardous waste closed reduces the potential for a spill or release of hazardous waste.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Two satellite containers holding approximately 35 gallons and one 356 day container holding approximately 15 gallons.</p> <p>(D) Toxicity or nature of the pollutant: Perchloroethylene is likely to be carcinogenic to humans and poses a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by keeping the containers holding hazardous waste closed. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Aisle Space

VIOLATION NO.: C (5)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent stored 365 day containers holding hazardous waste without adequate aisle space to allow for access to the containers by emergency response personnel, fire protection equipment and for inspection to ensure the containers are in good condition. The DEM's Hazardous Waste Regulations require generators to maintain a minimum of 3 feet of aisle space in container storage areas.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: 8 containers holding approximately 185 gallons of hazardous waste that were not stored with adequate aisle space.</p> <p>(D) Toxicity or nature of the pollutant: Perchloroethylene is likely to be carcinogenic to humans and poses a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by storing the containers with adequate aisle space. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Weekly Inspections

VIOLATION NO.: C (6)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to conduct inspections of the 365 day container storage area on a weekly basis. The DEM's Hazardous Waste Regulations require generators to inspect areas in which hazardous waste is stored in containers onsite. The requirement for generators to inspect container storage areas enables generators to identify containers that have been damaged or deteriorated as a result of corrosion or other factors providing a safeguard against releases of hazardous waste.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** 8 containers holding approximately 185 gallons of hazardous waste.
- (D) **Toxicity or nature of the pollutant:** Perchloroethylene is likely to be carcinogenic to humans and poses a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by performing weekly inspections of the containers. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Container Labeling & Open Container

VIOLATION NO.: C (7) & (8)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to label and close a container holding used oil while in storage onsite. State and Federal regulations require used oil generators to label containers holding used oil and keep them closed to prevent mismanagement and/or unplanned releases of used oil. This requirement to label and close containers are the core elements of the regulatory program because they ensure safe management of used oil.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: 1-gallon container</p> <p>(D) Toxicity or nature of the pollutant: Used oil is known to contain suspected human carcinogens.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by labeling the container and keeping it closed. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan & Universal Waste Training

VIOLATION NO.: C (9) & (10)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to develop and maintain a contingency plan or otherwise post required emergency contact information at the Facility. Respondent also failed to provide training to employees regarding the proper management of universal waste. The DEM's Hazardous Waste Regulations require generators to develop and maintain a contingency plan containing procedures to follow to minimize hazards posed to human health and the environment from fires, explosions or planned or unplanned releases involving hazardous waste. A contingency plan reduces the potential for injury of employees and/or response personnel that may be called upon for assistance during a fire, spill or release incident. The DEM's Hazardous Waste Regulations also require generators to provide training that teaches employees to perform their duties in a manner that ensures compliance with the regulations.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: 11 containers holding approximately 225 gallons of hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: Perchloroethylene is likely to be carcinogenic to humans and poses a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
<p>(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by providing training to its employees and by developing a contingency plan. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Evaporator Plan & Information Form

VIOLATION NO.: C (11)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to develop a written plan for the operation of an evaporator and to submit an Evaporator Information Form to the DEM. The DEM's Hazardous Waste Regulations require generators to develop a written plan for the operation of the evaporator to ensure that the device is not operated in a manner that causes a release of hazardous waste constituents to the atmosphere.</p> <p>(B) Environmental conditions: The evaporator is used to treat wastewater containing perchloroethylene and emits vapors to the atmosphere.</p> <p>(C) Amount of the pollutant: Unknown.</p> <p>(D) Toxicity or nature of the pollutant: Perchloroethylene is likely to be carcinogenic to humans and poses a potential human health hazard for non-cancer toxicity to the central nervous system, kidney, liver, immune and hematologic system.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by developing an evaporator plan and submitting an evaporator information form to the DEM. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$250